SINGAPORE REPORTS.

TEO HEO HUAT v. REX.

[App. Crim. Juris. (Murray-Aynsley, C.J.) September 7, 1949]

[Singapore — Magistrate's Appeal No. 69 of 1949]

Opium and Chandu Proclamation — Possession of chandu — Sentence.

This was an appeal against sentence in a case of possession of chandu.

Held, that severe punishment under the Opium and Chandu Proclamation should, generally speaking, be reserved for traffickers and others who make a living rather than for the actual smoker.

MAGISTRATE'S APPEAL.

Appellant in person.

A. H. Simpson (D. P. P.) for the Respondent.

Cur. Adv. Vult.

Murray-Aynsley, C. J. : — This was the case of a chandu smoker. I consider that, generally speaking, severe punishment should be reserved for traffickers and others who make a living rather than for the actual smoker, who probably contracted the habit when it was quite legal. If it is possible prison sentences should be avoided, and, if resorted to, it should be with view to a possible cure. In the present case the appellant was sentenced to 9 months r.i. on one charge and to a fine of $100 or a further month r.i. on an additional charge relating to the possession of certain utensils.

I considered that the sentence was in the circumstances excessive and I reduced it. It should be noted that these offences are still dealt with under the Opium and Chandu Proclamation in which penalties authorised are grossly excessive, much more severe than those authorised under the Deleterious Drugs Ordinance which was intended to deal with the use of drugs much more obnoxious than chandu.

Sentence Reduced.

NAGAPPAN v. CHEN CHI YA.

[Court of Appeal (Murray-Aynsley, C.J., Evans and Gordon-Smith, JJ.) October 27, 1949]

[Singapore — Civil Appeal No. 14 of 1949]

Landlord and Tenant — Condition in tenancy agreement prohibiting assignment or sub-letting — Transfer of business.

In this case the premises belonging to the respondent were let to one Singaraveloo by a written agreement containing a term "The tenant shall not transfer the tenancy to another or sublet the house without the previous written sanction of the Landlord". Subsequently Singaraveloo transferred the business he carried on at the premises and left the premises. The appellant claimed the tenancy as a result of an agreement with Singaraveloo and one Pakirisamy. The learned trial Judge found that there was a prohibition against assignment or sub-letting and that there was no acquiescence to the transfer or sub-letting by the landlord. He held further that the tenancy of the premises was transferred to the appellant but held that the respondent was entitled to recover possession under the Control of Rent Ordinance, 1947.

The appellant appealed against this Order for possession.

Held, that the prohibition to assign was a condition of the tenancy agreement and the appellant could not therefore in the circumstances become the tenant of the respondent.

Cases referred to :—

(1) *Pollock v. Stacey* (1847) 9 Q.B. 1033.
(2) *Moore v. Greg* 2 P. 717.
(3) *Doe v. Watt* 8 B. & C. 308.
(4) *Commissioners of Works v. Hull* (1922) 1 K.B. 205.

COURT OF APPEAL.

K. E. W. Hatchard for the Appellant.

Mark Morrison for the Respondent.

The Court dismissed the appeal and stated that they would give their reasons later.

On 27th October, 1949 the reasons for the dismissal of the appeal were given by Evans, J., with which Murray-Aynsley, C.J. and Gordon-Smith, J. concurred.

Evans, J. : — On this appeal the court is asked to say that the learned judge in the court of first instance, having found for the defendant that he was a tenant to the plaintiff of certain premises at 1 Joo Chiat Road, went on wrongly to give the plaintiff possession of the premises for reasons based on the Control of Rent Ordinance 1947 which had neither been pleaded nor argued. The defendant appealed against this order for possession.

The respondent is the owner of these and other lands, the management of which is in the hands of his father. In November 1937 the premises were let on a monthly tenancy from 1st December 1937 to one Singaraveloo by a written agreement containing a term "The tenant shall not transfer the tenancy to another or sublet the house without the previous written sanction of the Landlord," and signed by the parties the landlord under the words "I confirm the above" and the tenant under the words "I agree to the above".

In December 1947 the law enabled the landlord to increase the rent and for that purpose he sent circular notices to his tenants, enclosing forms to be signed by the tenants. In January one Pitchay Muthu brought the form in respect of No. 1 Joo Chiat Road signed by himself for S. Pakirisamy. Neither of these persons was known to the landlord. In March 1948 the defendant now appealing also a stranger to the respondent entered on the premises, in pursuance, as he now says, of agreements with Pakirisamy and Singaraveloo. The respondent then brought an action in trespass. The appellant pleaded he was respondent's tenant, but did not plead any clear devolution of the tenancy. His Defence seems to amount to pleas that there was no prohibition of assigning or subletting in the head lease, that he held by succession to a business, and that he held with the landlord's acquiescence to the transfer or subletting without specifying which his origin of title was. The rent receipts were at all times issued to Singaraveloo.

The second plea would not appear to amount to any defence at law. The other two pleas defendant failed to prove. The learned judge found that there was such prohibition and that "the plaintiff never knew the real position" and that the defendant "knew perfectly well what the true position was, and they knew that the plaintiff was not fully aware of it. They allowed plaintiff to remain unaware, but this was not in their own minds fraudulent." One is reminded of the words of Lord Greene, the learned judge "appears to underestimate the readiness with which persons deceive themselves. No amount of self deception can make dishonest action other than dishonest."

Appellant's argument, that the learned judge did not decide the case on the pleadings, might, therefore, have other application than his. The learned Judge seems to have based his opinion on a view he took of the facts and of the agreement between the original tenant and appellant, and of later agreements of the same nature. The most important of these agreements is the first and this, like the others, is reduced to writing. In such case the court would not generally look outside the document.

The learned Judge seems to have found an oral sublease which also acts as a conditional assignment. I can see no evidence, or any assertion by the appellant that any such agreement was made. The written contract seems sufficient and professes to convey no interest in land. The appellant could thereunder, properly carry on the business as licencee of the first tenant as between themselves. The landlord's rights or interests they never seem to have regarded. Moreover by the joint effects of the Statute of Frauds and the Real Property Act 1845 any assignment must be by deed *Pollock v. Stacey*[1]. The local provision which in effect combines these is if anything clearer. An assignment comes within the general provision of Section 53 of the Conveyancing and Law of Property Ordinance Cap. 118 as being a conveyance, but does not come within the exception for it is not a lease.

Even if any such transaction took place as the contract between these persons found by the learned judge, it seems to have been in the nature of an equitable mortgage by deposit of the lease. The Judge finds a deposit of the receipt for the money deposit made on the agreement to lease, this could not be more effective than deposit of the lease itself. It is not improbable, judging by appellant's conduct throughout, that the original agreement was transferred with the other documents and is not now produced in an attempt to deceive the court as he deceived his landlord. On such a mortgage the mortgagee is not a tenant. *Moore v. Greg*[2]. That case is the converse of this, but the learned Judge seems to give no additional ground to make the mortgagee tenant. Payment of rent against receipts in the lessee's name, in itself, could not suffice.

The principal element in the case is the prohibition to assign. The learned judge bases his opinion as to that on a passage in *Hill and Redman's* Landlord and Tenant at page 501. I cannot agree that it has the meaning ascribed to it by the learned judge. The prohibition may be by condition making the lease void, or by covenant, and its consequence depends on its character. Neither this passage nor the cases suggest that an assignment in breach of condition can be asserted against the landlord. What it is saying is that in such case the assigned lease is voidable at his option, but may be affirmed by him not being essentially void. If a covenant has no proviso for re-entry the only action may be for breach of covenant, but against the assignee as well as the lessee, if the covenant be expressed to include assigns. There seems to be no clear finding whether this term is a condition or covenant, though the learned Judge uses language suggesting that he regards it as a covenant. This it cannot be; it is not by deed. Such a stipulation which may be in gross, or collateral to the agreement, if not by covenant might raise questions as to consideration. In this case however there seems no doubt at all that the term is a condition. The distinction is discussed in *Doe v. Watt*[3] The words of the prohibition in

the case before us might even be described as mandatory, and the manner of signing seems to show clearly that they are imposed by the landlord as a condition of the letting. They are not a mere promise by the tenant.

In a more recent case *Commissioners of Works v. Hull*[4] the prohibition describes itself as a regulation, and the report describes it, I think rightly, as a condition. It is referred to in argument and judgment as a covenant, which in form apparently it could not be. The regulations contained a provision approximating to a proviso for re-entry on breach of any of the regulations, which may have included purely collateral matters unlike this as to the identity of a party. The landlord was thus doubly protected, but on such a prohibition a proviso would seem to me to be redundant. The proviso was not relied upon, and though called a covenant the prohibition seem to be treated as a condition. The case turned mainly on the appropriate remedy. That case was founded on trespass and in that supports the respondent's action here.

For these reasons I do not think the learned Judge's finding that appellant is a tenant to the respondent can possibly be upheld. On the other hand the order made was in my opinion right and the appeal fails.

Appeal Dismissed.

RE A. M. DRYSDALE (DECEASED); MUNICIPAL COMMISSIONERS OF THE TOWN OF SINGAPORE v. THE OFFICIAL ASSIGNEE.

[Bankruptcy Jurisdiction (Murray-Aynsley, C. J.)
November 25, 1949]

[In Bankruptcy No. 361 of 1941]

Action to recover money paid ex gratia to estate of deceased who was a bankrupt and subsequently paid to creditors — Quasi-contract — Whether Official Assignee has a duty to repay money — Bankruptcy.

In 1946 and 1947 the Municipal Commissioners passed certain resolutions for the making of ex gratia payments to employees in respect of the Japanese occupation. One of the persons who became entitled to this bounty was one A. M. Drysdale, who had been a bankrupt in 1941 and died in 1945 and was still a bankrupt at the time of his death. On February 20, 1948, the Municipal Treasurer paid a sum of money to the Official Assignee in respect of the said A. M. Drysdale. It appeared that in accordance with the resolutions in force at that time the payment was correctly made. On the 30th of April, 1948, the Municipal Commissioners passed a further resolution the effect of which was that payments in respect of deceased officers should be made to the dependents of the deceased or such other persons as they should think proper. The Municipal Commissioners subsequently brought a motion to recover such part of the sum as had been paid by the Official Assignee to the creditors of the deceased bankrupt.

Held, (1) that as there was no mistake of law or otherwise in this case and as the payment was a voluntary payment and the money had been paid out, the doctrine of Ex parte James dealing with the recovery of money paid under mistake of law did not apply; (2) that the Official Assignee was under no obligation, moral or otherwise, to have regard to a subsequent change of policy of the Municipal Commissioners; and (3) that the application must be dismissed.

Cases referred to :—

(1) *Ex parte James* 9 Ch. App. 609; 43 L.J. Boy 107.
(2) *Ex parte Villars* 9 Ch. App. 432.
(3) *Re Saxon Life Assurance Society* 2 J. & H. 408.
(4) *Stone v. Godfrey* 5 De G. M. and G. 76.
(5) *Ex parte Simmonds, in re Carnac* (1885) 16 Q.B.D. 308.
(6) *Rogers v. Ingham* (1876) 3 Ch. D. 351.
(7) *In re Tyler* (1907) 1 K.B. 865.
(8) *In re Hall* (1907) 1 K.B. 875.
(9) *In re Phillips* (1914) 2 K.B. 689.
(10) *In re Craig, ex parte Hinchcliffe* (1916) 2 K.B. 497.
(11) *In re Stokes* (1919) 2 K.B. 256.
(12) *In re Thellusson* (1919) 2 K.B. 735.
(13) *In re Wigzell* (1921) 2 K.B. 835.
(14) *Scranton's Trustee v. Pearse* (1922) 2 Ch. 87.
(15) *Sutters v. Briggs* (1922) 1 A.C. 1.
(16) *In re Leslie* (1883) 23 Ch. D. 552.
(17) *Falcke v. Scottish Imperial Insurance Co.* (1886) 34 Ch. D. 234.
(18) *Sebel Products Ltd. v. Commissioners of Customs and Excise* (1949) Ch. 409.
(19) *Aiken v. Short* 1 H. & N. 210.
(20) *Kerrison v. Glyn Mills, Currie & Co.* 81 L.J., K.B. 465.
(21) *Jones v. Waring and Gillow* (1926) A.C. 670.
(22) *Steam Saw Mills v. Baring Brothers* (1922) 1 Ch. 244.

MOTION IN BANKRUPTCY.

Dr. C. H. Withers-Payne for the Applicants.

D. Chapman, Assistant Official Assignee, for the Respondent.

Murray-Aynsley, C. J. : — In the course of 1946 and 1947 the Municipal Commissioners passed certain